October 6, 1947

UNCLASSIFIED SUMMARY MINUTES

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Ninth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

Approved:

Participants:

For the United States: Messrs. Ainsworth, Setser.

For Italy: Mr. Lombardo, President; Messrs. Simonis, Iannelli, Sensi, De Rossi, Sorrentino, Cattani, Maresca, Di Cristina, De Vera.

Time: 10:00 A.M. Monday, October 6, 1947.

Place: Palazzo Chigi

Article I

The American negotiators stated that they had received additional instructions as to two points in Article I.

With respect to the Italian proposal that notaries and agenti di cambio be excepted from the national-treatment rule regarding professional activities, they said that they had been authorized to propose the following provision in the protocol to the Treaty:

> The provisions of Article I, paragraph 2 (a) shall not be construed to extend to the practice of professions the members of which are designated by law as public officials.

Referring to the Italian proposal regarding regulations on the sojourn of foreigners, they stated that they had been authorized to agree to the amendment of the initial clause of Article I, paragraph 4, as follows:

> The provisions of this Treaty shall not be construed to affect existing laws and regulations of either High Contracting Party in relation to immigration or the right of either High Contracting Party to adopt and enforce laws and regulations relating to immigration, . . .

The Italian

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The Italian delegation stated that the proposed protocol provision interpreting paragraph 2 (a) was acceptable. They stated, however, that the proposed amendments in paragraph 4 did not solve the difficulty that had caused their original objection to this paragraph and that the amended version still left very much in doubt whether the Italian regulations relating to the sojourn of foreigners could be considered as covered by the word "immigration". The American negotiators drew attention to the phrase "laws and regulations relating to immigration" and suggested that the use of the phrase would seem to permit a broader interpretation than would the words "immigration laws and regulations" alone. The Italian negotiators stated, however, that they still considered the provisions unsatisfactory.

The American negotiators then stated that they had been authorized to include the following statement in the minutes:

> The two delegations agreed that it was their mutual understanding that the provisions of Article I would not prevent either party from subjecting aliens within its territories to appropriate surveillance not incompatible with the terms of the Treaty (such as liberty of movement, right of engaging in particular activities, freedom from arbitrary molestation, et cetera), or from expelling aliens for commission of crime, subversive activity, violation of conditions of entry, and other due causes.

The Italian delegation expressed satisfaction with this statement as meeting their views as to the authority which should be left to their Government to enforce police regulations relating to foreigners, but they added that they still considered necessary some more formal recognition of their point of view. They suggested that the problem could be solved by the use in the Italian original of the treaty of the words "entrata e soggiorno" where the English version uses the word "immigration". They stated that the Italian word "immigrazione" very definitely connotes migration for purposes of permanent settlement, and that the control of such movements is not the purpose of the regulations relating to the sojourn of foreigners. The American negotiators agreed to bring this suggestion and explanation to the attention of their Government.

Article V

The Italian negotiators referred to the previous discussion of the provision in paragraph 2 of this Article relating to the withdrawal of compensation for expropriated property. They repeated that the subject presented many difficulties because the proposals in the draft treaty were in conflict with the principles of the Italian exchange control laws and regulations. They stated that they might

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that they might nevertheless be able to submit a proposal acceptable to the United States Government, although they would expect that the United States would in turn give sympathetic consideration to an Italian proposal in some other field. They suggested that abandonment by the United States of the proposal in paragraph 2, Article XXII, with regard to most-favored-nation treatment as to the coasting trade, would be appropriate.

They stated that their proposal incorporated the principle of distinguishing between investments in dollars and investments in local currency in making provision for the withdrawal of compensation for expropriated property. They said that investments made by American citizens prior to December 8, 1934 would be presumed to have been made in dollars, and compensation therefor would be transferable. Investments made after that date, they said, would have to be classified as "transferable" or "non-transferable" according to certain criteria. These criteria were outlined in the following memorandum which was submitted by the Italian delegation:

A proposito dell'Art. V del Trattato, il quale stabilisce il diritto dei cittadini degli S.U.A. ad ottenere in dollari il compenso per i beni eventualmente espropriati, si propone di precisare che questo diritto spetta soltanto a coloro che hanno acquistato tali beni con pagamento in valuta estera o in lire italiane provenienti dal cambio di valuta estera.

Mentre per l'avvenire il criterio puo essere di facile applicazione, e stato giustamente osservato che in molti casi la prova dell'acquisto con valuta estera puo riuscire difficile.

Ora la prova, nella maggior parte dei casi, potra agevolmente darsi trattandosi di operazioni che avvengono normalmente per il tramite di una banca o di un agente di cambio.

Tuttavia, nei casi in cui la prova non potra essere raggiunta, si potra ricorrere a criteri presuntivi; che corrispondono ai principi ed all'applicazione delle leggi valutarie italiane:

A) Per i beni (immobili e titoli azionari) acquistati anteriormente al Dicembre 1934 (data di introduzione in Italia delle restrizioni valutarie): pagamento in dollari.

B) Per i beni acquistati dopo il dicembre 1934:
1) Beni immobili: pagamento in dollari solo nei casi in cui il cittadino degli S.U.A. non era, al momento dell'acquisto, residente in Italia.
2) Per i titoli azionari:
a) se circolano legittimamente all'estero: pagamento in dollari.

b) se sono detenuti

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b) se sono detenuti in Italia da un cittadino americano quivi residente: pagamento in lire italiane.

c) se sono depositati in banca:

- pagamento in dollari se si tratta di titoli detenuti in conti liberi (in lire o in dollari).

- pagamento in lire italiane se si tratta di conti intrasferibili o di non riconosciuta pertinenza estera (vedi unito appunto);

PRO MEMORIA

Presso le Banche italiane esistono le seguenti categorie di conti e depositi intestati a nominativi degli S.U.A.:

Conti di accertata pertinenza estera ma per i quali non e previsto il trasferimento all'estero delle relative disponibilita

Conti vecchi ordinari	Depositi vecchi ordinari
" " nuovi	= -
" " vecchi di assicurazione	=
" " misti Americhe	=
" " intrasferibili franco valuta	Depositi intrasferibili franco valuta

Conti per i quali non e riconosciuta la pertinenza estera,

Conti indisponibili	Depositi indisponibili
" speciali ordinari	" speciali ordinari
" intrasferibili ordinari	" intrasferibili ordinari

Conti di riconosciuta pertinenza estera per i quali e consentita la trasferibilita all'estero

Conti liberi in divisa)	
)	Depositi liberi
" " " " lire)	

The American negotiators

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The American negotiators inquired as to whether proceeds of all current transactions as defined in the Articles of Agreement of the International Monetary Fund would be considered transferable if reinvested in property in Italy. The reply was in the affirmative. They then asked whether an investment of an American firm made through the shipment of goods to Italy would be considered transferable. The Italian negotiators stated that the proceeds would be transferable if the original transaction had been made in compliance with the exchange control laws and regulations.

The Italian delegation stated that where the term "residente" was used in their memorandum it was intended to refer to permanent residence. They stated also that they would have no objection to providing in the treaty that the Italian Government should cooperate in aiding expropriated claimants to obtain evidence as to the transferability of their funds when such evidence was in Government control.

The Italian negotiators repeated the substance of the statement which they had made at a previous meeting to the effect that since Italy has a system of multiple exchange rates, they did not consider acceptable the rule proposed in the treaty draft that the terms of transfer should be "the most favorable terms applicable to such currency". They proposed that the rule should be that the terms should be "the most favorable terms applicable to capital transfers." They also proposed that the rule that the terms of transfer should be those applicable at the time of application for transfer should be substituted for the draft provision that the terms should be those applicable at the time of the taking of the property. They stated that they considered it undesirable to adopt a rule which would permit an expropriated person to make decision to reinvest his funds in Italy, to proceed with that plan for one year, and then change his mind and arrange to withdraw them. They said that they were prepared to accept the original provision on this point if the period of time within which the decision could be made were reduced to three months. They added that if the substitute rule were accepted, they would agree that the expropriated person could file application for transfer at the time of the taking of the property, and would not be required to state the amount to be transferred if that information were not available.

The American negotiators stated that they would bring the proposals and explanation presented by the Italian delegation to the attention of their Government.

Article VII

In accordance with arrangements made at a previous meeting, the Italian delegation submitted two re-drafts of paragraph 1 of this article. The texts of these drafts follow:

The nationals

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The nationals, corporations and associations of either High Contracting Party shall be permitted to acquire, own and dispose of real and other immovable property or interests therein within the territories of the other High Contracting Party upon the following terms:

A) In the case of nationals, corporations and associations of the Italian Republic, the right to acquire, own and dispose of such property or interests shall be dependent upon the laws and regulations which are or may hereafter be in force within the state, territory or possession of the United States of America wherein such property or interests are situated; and

B) In the case of nationals, corporations and associations of the United States of America, the right to acquire, own and dispose of such property or interests shall be upon conditions not less favorable than those accorded to nationals, corporations and associations of the Italian Republic within the state, territory or possession wherein the national of the United States of America is domiciled or under the laws of which the corporation or association of the United States of America is created or organized. Should, however, the laws and regulations of each state, territory or possession impose no limitations to the acquisition, ownership and disposal by nationals who are not residents of such state, territory or possession or by corporations and associations which are not created or organized under the laws of such state, territory or possession, such nationals, corporations and associations will be accorded in Italy the same treatment as that accorded, or which may hereafter be accorded, to nationals, corporations and associations of the Italian Republic.

-II-

The nationals, corporations and associations of either High Contracting Party shall be permitted to acquire, own and dispose of real and other immovable property or interests therein within the territories of the other High Contracting Party on conditions not less favorable than those which are or may hereafter be accorded to nationals, corporations and associations of such other High Contracting Party. The aforesaid provision, however, shall not apply in the case where the laws or regulations of a state, territory or possession of the United States of America impose limitations to the right of acquisition, ownership and disposal of such property or interests by nationals who are not residents of such state, territory or possession or by corporations and associations which are not created or organized under the laws of such state, territory or possession. In that event the Italian Republic shall not be obligated to accord to the nationals of the United States of America domiciled in such state, territory or possession or to the corporations and associations created or organized under the laws of such state, territory or possession a treatment more favorable than that now accorded by such state, territory or possession to nationals, corporations and associations of the Italian Republic.

The American

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The American negotiators stated that they would study these drafts, and also transmit copies of them to their Government.

Article XXVII

The Italian delegation, referring again to the objections it had made to the inclusion of this Article in its present form in the treaty, stated that if the U.S. Government believed that reference to the treaty was technically necessary, the Italian Government would prefer that such reference should be made applicable to specific provisions and included in the treaty with such specific provisions rather than in a separate general article such as the present Article XXVII. The American negotiators agreed to bring this suggestion to the attention of their Government.

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FOR DUNN AND SETSER

DEPARTMENT OF STATE
L&T
OCT 9 - 1947
TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

Control 1506

Oct 7, 1947

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Ref EMBTEL 2863, Sept 20

Article V, para 2. Pending receipt further information Italian objection timing applicable exchange rate, DEPT reaffirms adherence rule stated in para. Such rule economically justifiable as maintaining parity of financial value, and equitably justifiable as protecting former owner from currency depreciations that in effect deny him just and effective compensation.

Article V, para 2. Ref term QUOTE without interference UNQUOTE. Term desirable for emphasis and standardization. Treaty makes rule subject appropriate laws and regulations; and substantive interests of Govt adequately safeguarded by later exchange control provisions. You authorized, however, offer Italians following in successive order, as necessary: (a) substitute word QUOTE freely UNQUOTE; (b) insert QUOTE unreasonable UNQUOTE before QUOTE interference UNQUOTE; (c) delete term entirely. This completes preliminary comment Art.V, para 2.

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1979, 10/7/47 to ROME
Ref EMBTEL 3005, Sept 30.

Article XI, para 2. Not intended underwrite liberty transmit military secrets. Authorized if necessary, however, add following para protocol:

QUOTE Provisions para 2, Art XI, shall not be construed affect measures taken by either HCP to safeguard military secrets UNQUOTE.

If QUOTE military secrets UNQUOTE unacceptable, substitute QUOTE secret military information UNQUOTE, or QUOTE confidential military information UNQUOTE.

Article XIII, para 1. Authorized substitute QUOTE training or service in the armed forces UNQUOTE for QUOTE military or naval training or service under the jurisdiction UNQUOTE in third and fourth lines. Make corresponding changes in para 2, as follows: Substitute QUOTE armed UNQUOTE for QUOTE military or naval UNQUOTE in second and third lines; delete QUOTE military or naval UNQUOTE in fourth line; substitute QUCTE service in the armed forces UNQUOTE for QUOTE military or naval service under the jurisdiction UNQUOTE in fifteenth

and

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and sixteenth lines; substitute QUOTE the armed forces UNQUOTE for QUOTE the military or naval service UNQUOTE in nineteenth line.

Article XIII, para 2. Term QUOTE within reasonable time UNQUOTE in seventeenth line serves administrative convenience by preventing draftee delaying option until last minute when substantial time interval exists between call-up and actual commencement active service under Italian law. If such interval brief but still sufficient (say three or four days) to give draftee real opportunity make such option during such interval, you may delete cited term if that would secure Italian acceptance. If deletion made, minutes should show above explanation. If such interval technically non-existent or virtually so, draftee must still be given reasonable opportunity serve in forces own country, and DEPT will await EMB suggestion re formula to reconcile draftee's right with orderly military administration.

Article XVIII,

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Article XVIII, para 3. For your information, further consideration being given propriety retaining such cartel provision, which was provisionally proposed Italy draft for first time in bilateral commercial treaty. Wilcox recommends its omission unless can be revised to avoid embodying multilateral commitment (i.e., stipulation of a general economic policy that goes far beyond trade between US and Italy) and to avoid exceptions (such as for Webb-Pomerene Act). Later instructions will indicate whether para should be withdrawn or whether revised version should be substituted. In either event, US opposition to cartels in all their manifestations remains unaffected and will continue to be pressed through appropriate actions and instruments, such as ITO Charter.

Ref EMBTEL 3033, Oct 7 (delayed in transmission).

Article XXIII. Authorized substitute QUOTE for persons who are nationals of any third country UNQUOTE for material preceding QUOTE together UNQUOTE in item (A). Other part Italian nationality suggestion covered item (B). DEPT assent Italian suggestion without prejudice US interest

humane

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humane treatment stateless persons, including transit privileges those legitimately en route US.

DEPT approves EMB's reluctance re unnecessarily elaborating immigration laws proviso. However, since transit closely akin entry (Art.1, para 1), EMB may appropriately cite immigration proviso as qualifying transit of persons, as allowing barring undesirable and dangerous characters. Difficult state concisely exact scope police laws exception. While it does apply whole treaty, caution required in finding occasion its applicability to other than international trade provisions. For EMB information, note that reservation relates not (repeat not) to substance of police laws, but rather to action necessary to secure their enforcement. That is, such laws cannot in substance contravene treaty or discriminate contrary to Treaty, although administratively they can be applied differentially provided no arbitrary discrimination results. Compare Art.XXXVII, clause (G), NY draft ITO Charter.

Article XXIV,

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Article XXIV, para 1. Authorized add suggested new clause re national treasures, as in China Treaty.

Article XXIV, para 3. Term QUOTE consultation UNQUOTE in clause (B) has becoms fairly standard in bilateral treaties and is extensively used in ITO Charter. It does not (repeat not) imply at all that right join genuine custom union contingent on prior consent other HCP. If understanding to this effect in minutes unsatisfactory Italians, you are authorized substitute QUOTE exchange of views UNQUOTE.

Final clause. Authorized insert QUOTE both equally authentic UNQUOTE after word QUOTE languages UNQUOTE.

Full power for Dunn sign Treaty in process preparation.

LOVETT

ACTING

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